

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

3:08cv206

(3:05cr79)

ALVIN EUGENE MCSWAIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS MATTER comes before the Court upon the Petitioner's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence and Petitioner's Application to Proceed In Forma Pauperis. (Doc. No. 1).

The Court has considered the motion and the record of prior proceedings and determined that the United States Attorney should file an answer. Rule 4(b), Rules Governing § 2255 Proceedings.

With respect to the Motion to Proceed In Forma Pauperis, a motion to vacate does not require a filing fee; therefore, in forma pauperis status is not necessary to proceed with the case.

IT IS, THEREFORE, ORDERED that:

- 1) No later than forty (40) days from the filing of this Order, the United States Attorney shall file an answer to Petitioner's Motion to Vacate; and
- 2) Petitioner's Application to Proceed In Forma Pauperis is DENIED as moot.

Signed: May 6, 2008



Robert J. Conrad, Jr.
Chief United States District Judge

